

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Parts 1 and 17 of the)	RM - 11688
Commission's Rules Regarding Public)	
Notice Procedures for Processing Antenna)	
Structure Registration Applications for)	
Certain Temporary Towers)	

To: The Commission

REPLY COMMENTS

CTIA—The Wireless Association[®] (“CTIA”)¹ hereby replies to comments submitted in response to its Petition for Expedited Rulemaking (“Petition”).² Based on the arguments set forth in the Petition and the unanimous support for it,³ CTIA urges the Commission to commence the requested expedited rulemaking and to grant a blanket waiver of Section 17.4(c) pending resolution of the rulemaking.

CTIA’s Petition seeks to amend Section 17.4(c)(1) of the interim antenna structure registration (“ASR”) rules⁴ to add a limited exception from the public notice requirements set forth in Section 17.4(c)(3)-(4)⁵ for temporary towers that (i) will be in use for 60 days or less, (ii)

¹ CTIA is the international organization of the wireless communications industry for both carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² Wireless Telecommunications Bureau Seeks Comment on Petition of CTIA—The Wireless Association for Expedited Rulemaking and Blanket Waiver Regarding Public Notice Procedures for Temporary Towers, RM-11688, Public Notice, DA 13-53 (rel. January 25, 2013).

³ Supporting comments were filed by AT&T Services, Inc., NTCH, Inc., PCIA - The Wireless Infrastructure Association, and Verizon Wireless.

⁴ See 47 C.F.R. §§ 1.401; 17.4(c)(1).

⁵ See 47 C.F.R. §§ 17.4(c)(3)-(4).

require the filing of a Form 7460-1 with the Federal Aviation Administration (“FAA”), (iii) do not require marking or lighting pursuant to FAA regulations, and (iv) will be less than 200 feet (hereinafter “Two Month Towers”).

As noted by Chairman Genachowski, grant of the relief requested would “[p]rovid[e] . . . more flexibility to carriers to meet extraordinary, short-term service needs” and “accelerate private and public investment to strengthen our nation’s communications networks.”⁶ Exempting Two Month Towers and granting CTIA’s blanket waiver request also would be consistent with Commissioner Clyburn’s recent statement regarding the need to eliminate barriers to temporary tower deployments.⁷ Commissioner Clyburn expressed support for the Commission to continually review laws and regulations and “eliminate[e] those that have unintentionally erected barriers to, for example, temporary cell towers being sited. . . .”⁸ CTIA and wireless providers look forward to expeditious action by the Commission to facilitate nimble short-term deployments to respond to unexpected capacity constraints.

I. THE RECORD SUPPORTS AN EXPEDITED RULE CHANGE EXEMPTING TWO MONTH TOWERS FROM THE PUBLIC NOTICE REQUIREMENT IN THE INTERIM ASR RULES

CTIA demonstrated that an expedited rulemaking to exempt Two Month Towers serves the public interest because CMRS licensees often need to erect temporary towers in response to unanticipated events that present significant short-term capacity issues and, absent the exemption, the FCC’s interim ASR rules would effectively preclude CMRS licensees from

⁶ Chairman Julius Genachowski Announces New Broadband Acceleration Initiative Actions; Clarifies Rules to Speed Wireless Infrastructure Deployment; Moves to Expedite Temporary Cell Towers, News Release (Jan. 25, 2013).

⁷ Statement of Commissioner Mignon L. Clyburn, Second FCC National Hearing on Network Resilience and Reliability (Feb. 28, 2013).

⁸ *Id.*

responding to capacity issues in a timely manner.⁹ Commenters unanimously agreed with CTIA and urged the Commission to move forward expeditiously to grant the requested relief.¹⁰

Commenters also agreed with CTIA that the Two Month Tower exemption would not impact air safety or avian mortality.¹¹

Based on their experiences, commenting parties cite numerous examples where temporary tower deployments were inhibited due to the ASR public notice requirements. For example, Verizon Wireless cited eight examples where temporary towers could not be deployed as planned due to the ASR public notice requirements.¹² AT&T noted that, absent a waiver, the interim ASR requirements would have prevented the deployment of multiple cell sites on wheels (“COWs”) for the 2013 Presidential Inauguration.¹³ PCIA cited six examples where its members were unable to deploy temporary towers as planned due to the ASR public notice requirements.¹⁴

Thus, the record is replete with instances in which multiple infrastructure providers have been

⁹ Petition at 4-11.

¹⁰ See AT&T Comments at 1-2 (“AT&T strongly supports the proposed exemption . . .”); NTCH Comments at 1-3 (supporting the requested relief but proposing the exemption be addressed as part of the most recent biennial review and extended to temporary towers that would be in existence for 90 days or less); PCIA Comments at 1 (“PCIA urges the FCC to grant the petition and the waiver request”); Verizon Wireless Comments at 8 (stating that “[t]he Commission should grant CTIA’s request to adopt an exception to the ASR notice and comment rules for Two Month Towers and grant a blanket waiver of those rules during the pendency of the rulemaking proceeding”).

¹¹ AT&T Comments at 4 (noting that the proposed rule change can be made “without undermining environmental and air safety concerns or significantly affecting avian mortality”); NTCH Comments at 2 (“CTIA has carefully crafted its request to ensure that the relief requested is limited to a narrow range of circumstances where air traffic safety is fully protected”); PCIA Comments at 1 (“PCIA urges the FCC to grant the petition and the waiver request”); Verizon Wireless Comments at 8

¹² Verizon Wireless Comments at 3-4 (noting that the proposed temporary towers were precluded, had to be modified to avoid triggering the ASR rules, or had deployment delays to comply with the notice requirements).

¹³ AT&T Comments at 7.

¹⁴ PCIA Comments at 2-3.

thwarted in their attempts to provide short-term service by the public notice provisions of the Interim ASR Rules. Although this clearly is an unintended result, it is one that will continue absent grant of the requested relief.

As Verizon Wireless and NTCH noted, CTIA carefully crafted its proposed exception for Two Month Towers to minimize any impact on air safety or avian mortality.¹⁵ The two month period was proposed because it was the minimum time period that would address the most immediate needs of CTIA members for temporary tower deployments. CTIA notes that NTCH proposes that the exemption from the public notice requirement be extended to cover towers that will be deployed for up to 90 days, instead of the 60 days proposed by CTIA.¹⁶ CTIA continues to support an exemption for Two Month Towers, but would not object if the exemption were extended by an additional thirty days.

NTCH also suggested that the exemption for temporary towers could be addressed as part of the Commission's Biennial Review of its rules.¹⁷ Given the important public safety benefits associated with the Two Month Tower proposal, CTIA requested expedited action.

Incorporating CTIA's request into a Biennial Review would be inconsistent with expedited action, however, because historically the Biennial Review process has been quite lengthy. Given the public interest benefits associated with eliminating barriers to temporary tower deployments – benefits highlighted by Chairman Genachowski and Commissioner Clyburn – CTIA urges the Commission to commence an expedited rulemaking focused on the proposed exemption and refrain from shifting the Two Month Tower proposal into the Biennial Review.

¹⁵ Verizon Wireless Comments at 5-6; NTCH Comments at 2.

¹⁶ NTCH Comments at 3.

¹⁷ *Id.*

II. THE RECORD SUPPORTS GRANT OF A BLANKET WAIVER OF THE PUBLIC NOTICE REQUIREMENTS FOR TWO MONTH TOWERS PENDING CONCLUSION OF THE RULEMAKING

The Commission should grant expeditiously a blanket waiver of the public notice requirement for Two Month Towers during the pendency of CTIA's Petition.¹⁸ As demonstrated in the Petition, the Commission previously has granted blanket waivers pending completion of a notice of proposed rulemaking.¹⁹

The Commission may waive its rules for "good cause shown"²⁰ or if, due to unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest. The record demonstrates that the Two Month Tower proposal satisfies these standards. First, the proposal is a limited exemption from the public notice requirement for towers that will be in place for 60 days or less that would allow carriers to respond to temporary capacity issues and ensure service continuity without undermining meaningful review of environmental or air safety concerns.²¹ Second, enforcement of the existing public notice requirement would be unduly burdensome and contrary to the public interest because the requirement would preclude the deployment of Two Month Towers to address capacity issues necessary to ensure the continuation of wireless service or to prevent significant service degradation, both of which help ensure completion of emergency 9-1-1 calls

¹⁸ 47 C.F.R. §§ 1.3, 1.925.

¹⁹ See Petition at 11 n.25 (citing various cases granting waivers pending completion of rulemakings).

²⁰ Petition at 12; see 47 C.F.R. § 1.3.

²¹ Petition at 12; AT&T Comments at 9-10; PCIA Comments at 6; Verizon Wireless Comments at 7-8.

and communications between public safety first responders that also may utilize commercial wireless networks.²²

Finally, the request for a blanket waiver was unopposed. No party challenged CTIA's waiver showing or claimed that the waiver standard could not be satisfied. Accordingly, the requested blanket waiver should be granted pending conclusion of the expedited rulemaking on the proposed Two Month Tower exemption.

CONCLUSION

For the foregoing reasons, as well as those set forth in the record, the Commission (i) should commence an expedited rulemaking to exempt Two Month Towers from the public notice requirements of the Interim ASR rules, and (ii) should grant a blanket waiver of the ASR public notice requirements for Two Month towers during the pendency of the rulemaking.

Respectfully submitted,

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²² Petition at 12; AT&T Comments at 10; PCIA Comments at 6; Verizon Wireless Comments at 7-8.